

APPEAL NO. 022571
FILED NOVEMBER 13, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on September 17, 2002. The hearing officer resolved the sole disputed issue by deciding that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the fourth compensable quarter. The appellant (carrier) appealed on sufficiency grounds that the claimant had not sought reemployment with the employer; that the claimant was not satisfactorily participating in a Texas Rehabilitation Commission (TRC) program; and that any job contacts did not meet the good faith requirement. The claimant responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant was entitled to SIBs for the fourth compensable quarter. Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) by complying with Rules 130.102(d)(2) and (5) and 130.102(e). It is undisputed that the claimant sustained a compensable injury on _____; that the claimant has reached maximum medical improvement with an impairment rating of 15% or greater; and that the qualifying period for the fourth quarter was from February 22 through May 23, 2002, with the fourth quarter running from June 6 through September 4, 2002. The hearing officer made the finding that the claimant's unemployment was a direct result of the impairment from the compensable injury, and that finding is supported by sufficient evidence.

The claimant asserts that he met the good faith job search requirement of Rule 130.102(b)(2) by compliance with Rule 130.102(d)(2) and (5) and Rule 130.102(e) for the fourth quarter. In other words, the claimant proceeded on the theory that not only was he successfully enrolled in and in compliance with a TRC program, he also made good faith job searches for every week of the fourth quarter qualifying period, as documented on his Application for [SIBs] (TWCC-52). The carrier argued that the claimant had really been offered, and rejected, reemployment from the employer, and so had not acted in good faith in his search for employment. Evidence regarding whether the claimant had contacted the employer regarding reemployment was in conflict and the hearing officer could believe the claimant's version rather than the carrier's version. The claimant testified that he made the job searches as documented and that he attended computer training classes, in accordance with his TRC plan, during the fourth quarter qualifying period. The claimant introduced documentation from the TRC supporting his testimony. The carrier offered no contradictory testimony. Rule

130.102(d)(2) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, a full time vocational rehabilitation program sponsored by the TRC during the qualifying period; and Rule 130.102(d)(5) provides that the employee has acted in good faith if he has provided sufficient documentation as described in subsection (e) of Rule 130.102 to show that he or she has made a good faith effort to obtain employment. The hearing officer determined that the claimant had, in fact, made a good faith effort to return to employment commensurate with his abilities.

We note that one page three of the carrier's appeal (there are two page threes) was probably inserted in error as it appears to deal with an entirely different case.

After review of the record before us and the complained-of determination, we have concluded that there is sufficient legal and factual support for the hearing officer's decision. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **LEGION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Susan M. Kelley
Appeals Judge

Michael B. McShane
Appeals Panel
Manager/Judge